**FAO No. 316 of 1994**

24.10.2007 Present: Mr. Ramakant Sharma with Ms. Devyani Sharma, Advocates, for the appellant.

None for the respondents.

The only question which arises in this appeal is whether the Company Judge has any jurisdiction under Section 468 of the Companies Act, 1956, to issue directions to a debtor to pay the dues of the company (under liquidation) to the liquidator of the said company.

The factual situation in brief is that the appellant company is a company under liquidation and Shri Ravinder Kumar is the duly constituted liquidator of the company. The aforesaid liquidator moved an application under Sections 512, 518 read with Sections 467 and 468 read with Rule 9 of Companies (Court) Rules, 1959, praying that a direction be issued by the Company Judge to the respondents to pay a sum of Rs.1,68,405/- alongwith costs and interest. This claim was based on the allegation that respondent No. 1 had taken loan of Rs. 3,76,000/- from the petitioner company and the amount as prayed for was still due and payable to the company. The learned Single Judge rejected the claim on the ground that the petition filed was not maintainable.

The question that arises is whether the provisional liquidator was required to file a suit for recovery of this amount or whether he could invoke the jurisdiction under the Companies Act seeking such direction. The only provision of the Companies Act

which empowers the Company Judge to direct a person to pay the amount to the company is Section 468 of the Companies Act, which reads as follows:

> " **468. Delivery of property to liquidator**. - The Court may, at any time after making a winding-up order, require any contributory for the time being on the list of contributories, and any trustee, receiver, banker, agent, [officer or other employee] of the company, to pay, deliver, surrender or transfer forthwith, or within such time as the Court directs, to the liquidator, any money, property or books and papers [in his custody or under his control] to which the company is prima facie entitled."

A perusal of this Section clearly shows that all the persons from whom the recovery can be ordered by the Company Judge are in the nature of contributories, trustees, receivers, agents, employees etc. of the company. These are persons who were having a fiduciary relationship with the company. This Section in no way empowers the Company Judge to settle claims of the company under liquidation with its debtors. The dispute whether a debt is payable or not has to be decided by the competent Civil Court and not by the Company Judge. Hence, there is no merit in the appeal, which is accordingly dismissed.

**( Deepak Gupta ),J.**

**October 24, 2007** **( V.K. Ahuja), J.**
**(BSS)**